

Schweet Linde & Coulson, PLLC
575 S. Michigan St.
Seattle, WA 98108
P: (206) 275-1010 F: (206) 381-0101

Honorable Judge Marc Barreca
Location: Zoom
Hearing Date: March 23, 2022
Hearing Time: 10:00 a.m.
Response Due: March 16, 2022

IN THE U.S. BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

TIMOTHY DONALD EYMAN,

Debtor.

Chapter 7

Case No. 18-14536-MLB

TRUSTEE'S OBJECTION TO VORTMAN &
FEINSTEIN'S FINAL APPLICATION FOR
COMPENSATION AND CERTIFICATE OF
SERVICE THEREOF

Chapter 7¹ Trustee, Virginia Burdette, through counsel, enters her Objection to the Final Application for Compensation (the "Fee Application"), *Dkt 440*, filed by Vortman & Feinstein ("Feinstein").

First, Feinstein has failed to meet the mandatory disclosure requirements of §329, FRBP 2016(b), and Local Bankruptcy Rule 2016-1, which govern compensation of professionals. Further, fees related to the dispute surrounding Feinstein's recording of previous fee orders against property of the estate, and for other work described herein that did not provide a benefit to the estate, should be denied. Finally, fees should be denied on the basis that Feinstein ceased

¹ Unless otherwise specified, all chapter and section references are to the United States Bankruptcy Code, 11 U.S.C. §§101-1532.

OBJECTION TO VORTMAN & FEINSTEIN'S FINAL
APPLICATION FOR COMPENSATION - 1

SCHWEET LINDE & COULSON, PLLC
575 S. MICHIGAN ST.
SEATTLE, WA 98108
P (206) 275-1010 F (206) 381-0101

1 to be a disinterested party when it attempted to secure a previous fee award against property of
2 the estate.

3 I. FACTUAL BACKGROUND

4 Debtor Timothy Eyman filed his Chapter 11 bankruptcy, with the assistance of Feinstein,
5 on November 28, 2018. *Dkt. 1*. Feinstein's employment was approved on February 5, 2019. *Dkt.*
6 *57*.

7 Feinstein has sought, and been granted, compensation for its fees and expenses on three
8 previous occasions, in the amounts of \$34,319.32, \$31,493.35, and \$17,277,² for a total of
9 \$83,089.67. All filings regarding fees have been in the form of fee applications, with the
10 exception of a supplemental declaration (*Dkt. 108*) to correct and clarify statements made in the
11 motion to employ the Vortman & Feinstein firm. No supplemental disclosures have been filed to
12 disclose fees received, or previously undisclosed agreements.
13

14 In the Application for Compensation filed by Feinstein on June 8, 2020, *Dkt 284*,
15 Feinstein made the following representation:
16

17 Vortman & Feinstein is currently holding \$3,623.50 in its client trust
18 account to be applied to allowed final fees. The Debtor expects to pay
19 administrative fees from his ongoing donations, gifts and income, and
20 Counsel will negotiate repayment terms acceptable to the parties if the
21 Debtor is unable to pay in full the allowed administrative fees and costs by
22 the time the case closes. The source of funds to be paid would be from the
23 Debtor's legal defense fund bank accounts or from his primary checking
24 account from money received as gifts, donations or from his future
25 employment.

26 *Id.* This narrative describes the agreement regarding fees and payments that existed between the
debtor and Feinstein.

² *Dkt. 118, 229, and 291*, respectively.

1 Instead of being paid consistent with the agreement approved as part of the order
2 employing Feinstein, the order approving fees was recorded by Feinstein in the Snohomish
3 County Records. Recording occurred on January 20, 2021. No disclosure pursuant to FRBP
4 2016(b) was filed, despite the undeniable existence of a new agreement under which Feinstein
5 would forego payment as described and attempt to secure an interest in the Mukilteo home with
6 the recording of the fee order.

7
8 On February 25, 2022, Feinstein filed the Fee Application seeking approval of
9 \$23,392.10 as an administrative expense for work performed between April 8, 2020 and
10 December 21, 2021. Feinstein describes work performed relating to the attempt to sell debtor's
11 interest in the Mukilteo house to Karen Eyman, responding to the State's Motion for Relief from
12 Stay and subsequent Adversary Proceeding, which was triggered by the recording of Orders
13 awarding fees to Feinstein and counsel, Goodstein Law Group ("GLG"), and responding to the
14 State's motions to appoint a Chapter 11 Trustee, and later, to convert the case to Chapter 7.
15 Feinstein requests that the fees, if approved, be characterized as Administrative Claims in the
16 Chapter 7.
17

18 II. ARGUMENT

19 A. Feinstein Has Failed to Comply with the Disclosure Requirements Required of a 20 Professional Employed to Represent a Debtor to the Detrimental of the Estate.

21 Section 329(a) requires a debtor's attorney to

22 ...[F]ile with the court a statement of the compensation paid or agreed to
23 be paid, if such payment or agreement was made after one year before the
24 date of the filing of the petition, for services rendered or to be rendered in
25 contemplation of or in connection with the case by such attorney, and the
26 source of such compensation.

1 FRBP 2016(b) implements §329(a) by requiring debtor's counsel to file a supplemental
2 statement "...within 14 days after any payment or agreement not previously disclosed."

3 The specific requirements governing all applications for compensation of professionals is
4 set forth in Local Bankruptcy Rule 2016-1. Among other requirements, applications for
5 compensation must contain: the amounts of compensation and reimbursement of expenses
6 previously allowed, and amounts paid; the source of payments; and a summary of services
7 provided, results obtained, and benefit to the estate.
8

9 Feinstein has failed to file disclosures of payments and agreements as required by
10 Bankruptcy Rule 2016(b). Most concerning, in its June 2020 fee application, Feinstein
11 represented to this Court an arrangement under which Feinstein's fees would be paid by the
12 debtor. *See Dkt. 108*. This representation is at odds with Feinstein's course of action—attempting
13 to secure its fees against the property of the estate. That action indicates an entirely new,
14 undisclosed agreement regarding the expectations for payment of its fees.³
15

16 The disclosure requirements of §329(a) and FRBP 2016(b) are mandatory, not
17 permissive, and any attorney who fails to comply with the disclosure requirements forfeits any
18 right to receive compensation. *Pugeot v. United States Trustee (In re Crayton)*, 192 B.R. 970,
19 981 (B.A.P. 9th Cir. 1996). "The disclosure requirements are applied literally, even if the results
20 are sometimes harsh." *Neben & Starrett, Inc. v. Chartwell Financial Corp. (In re Park-Helena*
21 *Corp.)*, 63 F.3d 877, 881 (9th Cir. 1995). Even negligent or inadvertent failures to disclose fully
22 relevant information in a FRBP 2016 statement can result in denial of all requested fees. *Id.* at
23 882. The extent to which compensation should be denied rests within the Court's discretion. *Id.*
24

25 ³ To the extent that Feinstein may argue that disclosure and disinterestedness was unnecessary
26 because the case had previously been closed, the Trustee would respond that under the same
theory, post-closure fees should not be given administrative priority.

1 A bankruptcy court may deny attorney fees completely when disclosure is lacking.⁴ *Law Offices*
2 *of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F.3d 1040, 1045 (9th Cir. 1995). Disclosures
3 must be “explicit and complete.” *In re Midway Indus. Contractors*, 272 B.R. 651, 662 (Bankr.
4 N.D. Ill. 2001). “Coy or incomplete disclosures which leave the court to ferret out pertinent
5 information from other sources are not sufficient.” *Id.* (quoting *In re Saturley*, 131 B.R. 509, 517
6 (Bankr. D. ME. 1991).

7
8 At a fundamental level, Feinstein’s lack of disclosure negatively impacted the
9 administration of the estate. Had Feinstein followed the disclosure requirement to disclose a
10 payment or agreement not previously disclosed, there is no doubt that the State of Washington,
11 this Court, and other interested parties would have become aware of the debtor’s nascent default
12 far sooner—possibly as early as July 2020, and in any case shortly after the debtor and Feinstein
13 reached a revised agreement regarding payment. Instead, the utter lack of transparency regarding
14 the debtor’s non-payment and the alternate payment arrangement (recording of the Orders
15 against estate property) has resulted in significant delay, legal process, and ultimately the filing
16 of *State of Washington v. Eyman, et al.*, Case Number 21-01041.

17
18 The Trustee opposes approval of fees under Feinstein’s Application for Compensation
19 now before the Court. “Because the integrity of the bankruptcy system is at stake, it is
20 absolutely essential that the Court not simply ‘excuse’ counsel when compliance falls short of
21 that required by the Code and Rules.” *In re Coombe Farms, Inc.*, 257 B.R. 48, 53–54 (BK. ID.
22 2001).

23
24 **B. Feinstein Has Not Demonstrated How the Services for Which Compensation is**
25 **Sought Were Reasonably Expected to Provide Value to the Estate.**

26

⁴ Though disgorgement of fees is permissible remedy for failure to meet disclosure requirements, the remedy of disgorgement is beyond the scope of the issues presented by the Fee Application.

1 Professionals hired by a bankruptcy estate are only entitled to compensation for actual
2 and necessary services. §330(a)(1). Compensation that is not reasonably likely to benefit the
3 estate is not compensable. §330(a)(4). An applicant bears the burden of proof to establish the
4 fees and costs sought were reasonable and likely to provide a benefit to the estate. *In re Esar*
5 *Ventures*, 62 B.R. 204, 205 (Bankr. D. Hawaii 1986).

6 Feinstein expended attorney time responding to the State's Motion for Relief from Stay
7 and preparing for and attending hearing on the motion necessitated by Feinstein's recording of
8 the prior fee orders. Feinstein's fee application reveals \$3,242.50 spent responding to the State's
9 Motion for Relief, and \$1,955.00 spent responding to the State's Adversary Proceeding
10 predicated on the same facts as the motion for relief. *Dkt 441-1*.

12 The Trustee further objects to payment of compensation for Feinstein's attempt to
13 negotiate the sale of the debtor's interest in the Mukilteo home. At the time of filing, the home
14 was valued by the debtor at \$900,000.00. *Dkt. 1*. The proposed sale, in 2020, was for the sum of
15 \$372,500.00. *Dkt. 302*. It strains credulity to believe that seeking to sell estate property at below
16 market value would somehow benefit the estate. Fees in the amount of \$5,080.00 relate to the
17 effort to negotiate sale of the house to Karen Eyman. *See Dkt 441-1*.

19 On a more general level, the Fee Application does not provide any information regarding
20 the alleged benefit to the estate of any of the services for which compensation is sought. Until
21 Feinstein can meet its burden to demonstrate it is entitled to the compensation sought, the Fee
22 Application should be denied.

23
24 **C. Feinstein's Action of Recording the Order Disentitles Them to Further Compensation**

25 Section 328(c) provides:
26

1 ...[T]he court may deny allowance of compensation for services and
2 reimbursement of expenses of a professional person employed under
3 section 327 or 1103 of this title if, **at any time during such professional**
4 **person's employment** under section 327 or 1103 of this title, such
professional person is not a disinterested person, or **represents or holds**
5 **an interest adverse to the interest of the estate** with respect to the matter
on which such professional person is employed.

6 (emphasis added). This section requires a professional retained under §327 to *remain*
7 disinterested throughout the duration of his employment.

8 A “disinterested person” means a person that “...is not a creditor, an equity security
9 holder, or an insider...” and one who “...does not have an interest materially adverse to the
10 interest of the estate... by reason of any direct or indirect relationship to, connection with, or
11 interest in, the debtor, or for any other reason.” §101(14)(A) and (C).

12 The accepted definition of “...‘adverse interest’ is the (1) possession or assertion of an
13 economic interest that would tend to lessen the value of the bankruptcy estate; or (2) possession
14 or assertion of an economic interest that would create either an actual or potential dispute in
15 which the estate is a rival claimant....” *AFI Holding, Inc.*, 530 F.3d 832, 845 (9th Cir. 2008).
16 The breadth of these terms has been read as sufficient to exclude a professional who has an
17 interest or relationship that “...‘would even faintly color the independence and impartial attitude
18 required by the Code.’” *See AFI Holding*, 530 F.3d at 846 (quoting *Kravit, Gass & Weber, S.C.*
19 *v. Michel (In re Crivello)*, 134 F.3d 831, 835 (7th Cir.1998).

20 Failure to disclose to the Court that a professional is a “significant creditor” compounds
21 an already questionable position through lack of transparency. In a comparable case, *In re*
22 *Combe Farms, Inc.*, debtor’s counsel failed to timely file the required fee disclosure. *See*
23 *generally*, 257 B.R. 48 (Bankr. D. Idaho 2001). Upon bringing his fee application, facts emerged
24 revealing that the debtor company’s principals had agreed to personally pay the debtor’s attorney
25
26

1 for remaining fees on the debtor's prior case and had secured the debt with a lien on their house.
2 In a written opinion, the attorney's fees were reduced in light of the failure to disclose and the
3 lack of disinterestedness. *Id.* at 54. Here, Feinstein's attempt to secure fees by an undisclosed
4 encumbrance on property of the estate is an even more clear departure from "disinterested"
5 behavior on the part of estate professionals.

6 Feinstein's recording of the order creates a "material adverse interest," as demonstrated
7 by the *actual* dispute in which the estate is a rival claimant, i.e., the suit filed by the State of
8 Washington. Feinstein's affirmative action to record the prior fee orders resulted in taking a
9 materially adverse interest, and should result in denial of compensation from the date of
10 recording forward under §328(c).
11

12 III. CONCLUSION

13 For the reasons stated herein, the Trustee respectfully requests this Court reduce or deny
14 fees requested by Feinstein. Furthermore, the Trustee joins in the State of Washington's
15 objection to the Fee Application at Dkt. 444.
16

17 Respectfully submitted this 16th day of March 2022.

18 **SCHWEET LINDE & COULSON, PLLC**

19 /s/Michael M. Sperry

20 Michael M. Sperry, WSBA#43760

21 Thomas S. Linde, WSBA#14426

22 Latife H. Neu, WSBA#33144

23 Attorney for Virginia Burdette, Chapter 7 Trustee
24
25
26

CERTIFICATE OF SERVICE

I, Michael M. Sperry, hereby certify that, on the date below, a true and correct copy of the foregoing document will be delivered to the following by the Court's CM/ECF system:

Susan M Edison on behalf of Counter Defendant State of Washington
BCUEdison@atg.wa.gov

Larry B. Feinstein on behalf of Debtor Timothy Donald Eyman
1947feinstein@gmail.com, kpscordato@gmail.com; feinsteinlr71744@notify.bestcase.com

Dina Yunker Frank on behalf of Counter Defendant State of Washington
BCUYunker@atg.wa.gov

Seth Goodstein on behalf of Spec. Counsel Goodstein Law Group PLLC
sethg@roilawfirm.com, sethgoodstein@yahoo.com

Gregor A Hensrude on behalf of Creditor PC Klinedinst
ghensrude@klinedinstlaw.com, rcurtis-stroeder@klinedinstlaw.com; asoldato@klinedinstlaw.com

Carolyn A Lake on behalf of Defendant Goodstein Law Group PLLC
clake@goodsteinlaw.com

Robert M. McCallum on behalf of Spec. Counsel Robert McCallum
jbonwell@lesourd.com

Eric S Newman on behalf of Counter Defendant State of Washington
Eric.Newman@atg.wa.gov, Jessica.Buswell@atg.wa.gov; ATSeaEF@atg.wa.gov

Eric S Newman on behalf of Interested Party State of Washington
erickn@atg.wa.gov, Jessica.Buswell@atg.wa.gov; ATSeaEF@atg.wa.gov

Kathryn Scordato on behalf of Debtor Timothy Donald Eyman
kpscordato@gmail.com, 1947feinstein@gmail.com

Martin L. Smith on behalf of US Trustee United States Trustee
martin.l.smith@usdoj.gov, Young-Mi.Petteys@usdoj.gov; Martha.A.VanDraanen@usdoj.gov; Brian.B.Braun@ust.doj.gov

Marc S. Stern on behalf of Cross-Claimant Karen Eyman
office@hutzbah.com, marc@hutzbah.com; tanya@hutzbah.com

[SERVICE PARTIES CONTINUE ON NEXT PAGE]

OBJECTION TO VORTMAN & FEINSTEIN'S FINAL
APPLICATION FOR COMPENSATION - 9

SCHWEET LINDE & COULSON, PLLC

575 S. MICHIGAN ST.
SEATTLE, WA 98108

P (206) 275-1010 F (206) 381-0101

1 Laurie M Thornton on behalf of US Trustee United States Trustee
laurie.m.thornton@usdoj.gov, martha.a.vandraanen@usdoj.gov; Young-Mi.petteys@usdoj.gov

2 United States Trustee
3 USTPRegion18.SE.ECF@usdoj.gov

4 Signed at Kent, Washington on March 16, 2022.

5 /s/ **Michael M. Sperry**
6 Michael M. Sperry

26
OBJECTION TO VORTMAN & FEINSTEIN'S FINAL
APPLICATION FOR COMPENSATION - 10

SCHWEET LINDE & COULSON, PLLC
575 S. MICHIGAN ST.
SEATTLE, WA 98108
P (206) 275-1010 F (206) 381-0101